

**State Water Resources Control Board**  
**Division of Financial Assistance (DFA)**  
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**Compliance Guidelines for Clean Water State Revolving Fund (CWSRF) Loan Program**  
**Disadvantaged Business Enterprise (DBE)**  
**January 2009**

This document and attachments shall be included by the owner as a contract provision for all construction contracts exceeding \$10,000.

Compliance with the requirements of this document and attachments satisfies the DBE requirements of the U. S. Environmental Protection Agency and the State Water Resources Control Water Board. This document supersedes any conflicting requirements.

Failure to take the five (5) affirmative steps listed under Requirements, Section 3, prior to bid opening and to submit “Disadvantaged Business Enterprise Information” (Form 4) with the bid shall cause the bid to be rejected as a non-responsive bid.

**NOTE:** On March 26, 2008, the Environmental Protection Agency (EPA) Office of Small Business Programs (OSBP) published its final rule, “Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency Financial Assistance Agreements (DBE Rule) in the Federal Register (40 CFR Part 30-40). The final rule took effect on May 25, 2008. The EPA DBE Program encompasses many of the components of the former MBE/WBE Program and also includes changes.

Some changes are:

- Creation of the Disadvantaged Business Enterprise (DBE) Program (formerly the Minority Business Enterprise/Women’s Business Enterprise (MBE/WBE) Program).
- Recipients must negotiate fair share objectives with the agency, and now the fair share objectives and supporting documentation must be submitted within 120 days after acceptance of the assistance award.
- The “Six Affirmative Steps” and “Six Positive Efforts” were combined into the “Six Good Faith Efforts.”
- Recipients who reported quarterly under the old MBE/WBE program will now report semi-annually.
- MBE’s and WBE’s can no longer self-certify. They must be certified by EPA, Small Business Administration (SBA), Department of Transportation (DOT) or by state, local, Tribal or private entities whose certification criteria match EPA’s. (MBEs and WBEs must be certified in order to be counted toward a recipient’s MBE/WBE accomplishments.) The new requirements affect all financial assistance agreements entered into from the effective date of the rule (May 25, 2008). The new DBE rule won’t affect those financial assistance agreements entered into before May 25, 2008; those will still operate under the old MBE/WBE program requirements.

*Clean Water State Revolving Fund Loan Program DBE Instructions*

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## **Section 1: APPROVAL OF AWARD (AOA) PROCESS**

### **REQUIRED FOR CLEAN WATER STATE REVOLVING FUND LOANS DIVISION OF FINANCIAL ASSISTANCE (DFA)**

The purpose of this document is to provide a summary of the DBE “Good Faith” effort for CWSRF Loan contractors and recipients. Section 1 provides the contractor and recipient with a brief overview of the AOA process. The DBE “Good Faith” effort is one element of the AOA process summarized below. The AOA request package submitted to DFA for approval must contain all of the following:

1. Completed AOA **Form 555-1** (original must be signed by the recipient’s authorized representative or designee)
2. Attachments listed on item 7 of the AOA Form;

If you have any questions regarding the AOA process, please contact Barbara August of the DFA at (916) 341-6952 or [baugust@waterboards.ca.gov](mailto:baugust@waterboards.ca.gov).

## **Section 2: PRIME CONTRACTOR & RECIPIENT RESPONSIBILITIES**

### **PARTICIPATION RESPONSIBILITIES FOR PRIMES AND THEIR SUBCONTRACTORS**

All recipients of federal funds from the U. S. Environmental Protection Agency (USEPA), as well as their prime contractors and subcontractors, must make every effort to solicit bids from eligible DBEs. This information must be documented and reported to DFA as described in this document.

#### **The DBE responsibilities of the prime contractor are:**

1. To conduct a “Good Faith” effort to ensure maximum DBE participation in the project;
2. Complete or obtain from DBE subcontractors, all of the completed forms required in these guidelines (Forms 1-5) and submit them to the recipient; and
3. Report actual DBE participation on a semi-annual basis to the recipient.

#### **The DBE responsibilities of the Agency are:**

1. To ensure that the prime contractor meets the responsibilities identified in these guidelines;
2. Submit all documentation identified in these guidelines to DFA and maintain all records in the project files for later access or auditing; and
3. Provide semi-annual reports on DBE procurements to DFA.

### **Section 3: “Good Faith” Effort Process**

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract DBEs on any CWSRF contracts. The process to attract DBEs is referred to as the “Good Faith” effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that DBEs are used whenever possible as sources of supplies, construction, equipment or services. Failure to take the steps outlined below and submit Form 4, Prime Contractor/Recipient Selected DBEs, prior to bid opening, shall cause the bid to be rejected as non-responsive. Use Forms **1 through 5** to document the process, **6 is completed by the Agency**. If it is not practical or possible to comply with one or more of the five steps, prepare an explanation and submit it with the AOA package.

**STEP 1:** Divide the total requirements, when economically feasible, into small tasks or quantities to permit maximum participation. Evidence submitted must illustrate that the work was divided into small proprietary portions (e.g. paving, electrical, landscaping, revegetation).

**STEP 2:** Establish delivery schedules, when work requirements permit, that encourage maximum DBE participation.

**STEP 3:** Use the services of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the U. S. Department of Commerce (DOC) in soliciting qualified DBEs. Utilization of these resources is required at no cost. These agencies offer several services, including Internet access to databases of DBEs. SBA’s database is (<http://www.ccr.gov/>). (See page 18 for instructions to access the database).

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For additional assistance, the recipient or contractor can telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. There are contact phone numbers listed in Step 5 that will assist you in reaching the two offices if the Internet is unavailable. **Do not write to these sources.**

The prime contractor must provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting bid opportunity at least **fifteen working days prior to bid opening** and solicitation to DBE subcontractors at least **ten working days prior to bid opening**. Documentation must not only include the efforts to contact the information sources and list the contract opportunity, but also the solicitation and response to the bid request.

**STEP 4:** Include qualified DBEs on solicitation lists (Form 1) and record the information. Solicitation should be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible DBEs: <http://www.sba.gov>, <http://www.ccr.gov> and <http://www.mbda.gov>. If DBE sources are *not* located, explain why and describe the efforts made. See Step 5 for more detailed information.

For all contracts, the prime contractor must send invitations to at least three (or all, if less than three) DBE vendors for each item of work referred by sources contacted. The invitations must adequately specify the items for which bids are requested. The record of “good faith” efforts must indicate a real desire for a positive response, such as a certified mail receipt or a documented telephone conversation. **(A regular letter or an unanswered telephone call is *not* an adequate “good faith” effort).** A list of all sub-bidders, including the bidders **not** selected and non DBE subcontractors, and bid amount for each item of work must be submitted on Form 5. If a low bid was not accepted, an explanation must be provided.

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**STEP 5:** DBE potential resources centers. Solicit available DBEs and DBEs whenever they are potential sources. The prime contractor must provide invitations to DBE sub-bidders at least **ten working days** prior to the bid opening date.

### **Federal Agencies (must be contacted):**

<b>Name and Address</b>	<b>Telephone and Web Site</b>
<b>U.S. Small Business Administration</b>	(415) 744-6820 Extension 0
455 Market Street, Suite 600	PRO-Net DAOAbase: <a href="http://www.ccr.gov/">http://www.ccr.gov/</a> <sup>1</sup>
San Francisco, CA 94105	Bid Notification: <a href="http://web.sba.gov/subnet/">http://web.sba.gov/subnet/</a> <sup>2</sup>
RE: Minority Enterprise Development Offices	
<b>U.S. Department of Commerce</b>	(415) 744-3001
Minority Business Development Agency	Phoenix/ Opportunity DAOAbase:
211 Main Street, Room 1280	<a href="http://www.mbda.gov">http://www.mbda.gov</a>
San Francisco, CA 94105	RE: Business Development Centers

### **State Agencies (optional contacts):**

<b>Name and Address</b>	<b>Telephone and Web Site</b>
<b>California Department of Transportation</b>	Mailing Address: PO Box 942874
(CALTRANS) Business Enterprise Program <sup>3</sup>	Sacramento, CA 94274-0015
1820 Alhambra Blvd.	(916) 227-9599
Sacramento, CA 95816	<a href="http://www.dot.ca.gov/hq/bep">www.dot.ca.gov/hq/bep</a>
<b>CA Public Utilities Commission (CPUC)<sup>4</sup></b>	
505 Van Ness Avenue	<a href="http://www.cpuc.ca.gov/static/supplierdiversity">http://www.cpuc.ca.gov/static/supplierdiversity</a>
San Francisco, CA 94102-3298	

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<sup>1</sup> PRO-Net new dAOAbase is the SBA's electronic search engine that was put on line January 1, 2004, containing business profiles for nearly 200,000 businesses. The SBA requests Internet contact only for a list of potential DBE subcontractors that can be downloaded from PRO-Net: **<http://www.ccr.gov>**. Downloading will verify that the prime contractor made the required contact with the SBA.

<sup>2</sup> Prime contractors use SUB-Net to post subcontracting opportunities. Small businesses can review this web site to identify opportunities in their areas of expertise. The web site is designed primarily as a place for large businesses to post solicitations and notices.

<sup>3</sup> Based on the federal Disadvantaged Business Enterprises (DBE) program, CALTRANS maintains a dAOAbase and provides directories of minority and woman-owned firms.

<sup>4</sup> CPUC maintains a dAOAbase of DBE-owned business enterprises and serves to inform the public.

## **Section 4: Non-Governmental Local Contacts**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) RESOURCES**

The following organizations provide services to identify potential DBEs. Some of the organizations charge a fee or require membership fees to provide their services. Services provided, may include the entire Good Faith effort process for recipients that need comprehensive assistance.

#### **Humboldt Builder's Exchange Inc. Construction**

2355 Myrtle Ave.  
Eureka, CA 95501  
Phone #: (707) 442-3708  
FAX #: (707) 442-6051  
[www.humvx.com](http://www.humvx.com)

#### **California Daily Bid Advisor/Challenge News**

1276 Lincoln Ave. #203  
San Jose, CA 95125  
Phone #: (408) 998-0241  
or (800) 298-0240  
FAX #: (408) 998-2534

#### **California Procurement Training and Assistance Center at West Valley**

1 West Campbell Ave., Ste J70  
Campbell CA 95008  
Phone #: (408) 871-4390  
FAX #: (408) 378-2034

#### **Contractors Assistance Center**

P. O. Box 7675  
Redlands, CA 92375  
Phone #: (800) 742-4124  
FAX #: (800) 742-4125

#### **Eldridge Bid Reporter, M/W/DVBE Assistance**

P. O. Box 699  
West Sacramento, CA 95691  
Phone #: (916) 444-7618  
FAX #: (916) 444-7731  
[www.ebrbids.com](http://www.ebrbids.com)

#### **Regis Communications**

#### **Bid Source Interactive (CBSI)**

P. O. Box 568  
Burson, CA 95225-0568  
Phone #: (209) 772-3670  
FAX #: (800) 560-7266  
[www.Regis-usa.com](http://www.Regis-usa.com)  
1-800-962-4162

#### **Riverside Community College District**

Procurement Assistance Center  
2038 Iowa Ave., Ste. 100  
Riverside, CA 92507  
Phone #: (909) 788-2559  
FAX #: (909) 788-2515  
[www.resources4u.com/pac](http://www.resources4u.com/pac)

#### **Small Business Exchange**

703 Market St., Ste. 1000  
San Francisco, CA 94103  
Phone #: (415) 778-6250  
FAX #: (415) 778-6255  
[www.sbeinc.com](http://www.sbeinc.com)

## **Section 5: Reporting Requirements**

All requests for services, supplies, equipment or construction solicited by the SWRCB, other governmental agencies, non-profit agencies, or private businesses are subject to the DBE requirements. **These requirements apply to the prime contractor and all subcontractors.** The only exceptions to this requirement are contracts with governmental or non-profit agencies.

For the duration of the contract, all primary and subcontractors will be required to report progress made in fulfilling the “good faith” effort in their quarterly reports. Failure to provide this information as stipulated in the contract language will be cause for contract termination. DFA staff will provide recipients with the forms and instructions to report their “good faith” efforts when the AOA and contract is issued.

Once a bidder is selected, the prime contractor should compile the information required by the “good faith” effort process. **All information supporting the “good faith” effort must be submitted within ten working days after the bid opening.** Recipient shall review the successful bidder’s records closely to be sure that, prior to bid opening, all required “good faith” efforts were made. Failure of either the bidder or prime contractor/subcontractor to follow the process and provide the necessary information to DFA could jeopardize the bidding process. The following situations and circumstances require actions as indicated:

1. If the apparent successful low bidder was rejected a complete explanation must be provided.
2. Each DBE firm utilized must complete and submit the **Form 3**. Contractors can no longer self-certify. Contractors must provide evidence that they have been certified. Contractors must be certified within ten days after the bid opening date.
3. If additional subcontracts become necessary after the award of the prime contract, provide Form 3 to DFA within ten working days following the award of each new subcontract.
4. Any deviation from the information provided at the time of the bid shall not result in a reduction of DBE participation without prior approval of Division of Financial Assistance Project Manager.
5. Failure of the apparent low bidder to perform the five “good faith” effort steps *prior* to bid opening and submittal of Form 4 with the bid, will result in its bid being declared non-responsive. The contract may then be awarded to the next low, responsive, responsible bidder that meets the requirements or the recipient may re-advertise the project.
6. The apparent successful low bidder must submit documentation to the recipient within ten working days following bid opening showing that, prior to the bid opening, all required “good faith” efforts were made.

## **Section 6: Definitions**

**A bona fide disadvantaged business enterprise (DBE)** is a:

- (1) DBE that has submitted a “Disadvantaged Business Enterprise” **Form 3**, and
- (2) A firm that has been accepted as a bona fide DBE by the prime contractor/recipient.



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In addition, a bona fide DBE must be an independent business concern that is at least 51% owned, controlled, and operated by minority group members (see definition of minority group member) or women. Ownership and control can be measured by:

- Contract work performance responsibility.
- Management responsibility.
- At least 51% share of profits and risk.
- Other dAOA (such as voting rights) that may clarify ownership or control.

**Control** means exercising the power to make policy decisions.

**Operate** means being actively involved in the day-to-day management of the business.

Determination of whether a business is at least 51% owned by a woman or women shall be made without regard to community property laws. An otherwise qualified DBE which is 51% owned by a married woman in a community property state will not be disqualified because her husband has a 50% interest in her share. Similarly, a business that is 51% owned by a married man and 49% by an unmarried woman does not become a qualified DBE by virtue of the wife's 50% interest in the husband's share of the business.

**A joint venture** is a business enterprise formed by a combination of firms under a joint venture agreement. To qualify as a bona fide DBE, the minority-owned or women-owned and controlled firms in the joint venture must:

- Satisfy all requirements for bona fide DBE participation in their own rights.
- Share a clearly defined percentage of the ownership, management responsibilities, risks, and profits of the joint venture. Only this percentage of ownership will be credited towards the DBE goal.

**A minority group member** is a citizen of the United States and one of the following:

- **Native American** consists of American Indian, Eskimo, Aleut, and native Hawaiian. To qualify, the person must meet one of the following criteria:
  1. Native Americans are at least one-fourth Indian descent (as evidenced by registration with the Bureau of Indian Affairs).
  2. Characteristic Indian appearance and features.
  3. Characteristic Indian name.
  4. Recognition in the community as an Indian.
  5. Membership in a tribe, band, or group of American Indians (recognized by the Federal Government), as evidenced by a tribal enrollment number or similar indication.
- **African-American** consists of individuals having origins in any of the black racial groups of Africa.
- **Asian-Pacific American** consists of individuals having origins in any of the original peoples of the Far East, Southeast Asia, and the Indian subcontinent. This area includes, for example, China, Japan, Korea, the Philippines, Vietnam, Samoa, Guam, U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan. The Indian subcontinent takes in the countries of India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.

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- **Hispanic American** consists of individuals with origins from Puerto Rico, Mexico, Cuba, or South or Central America. Only those persons from Central and South American countries who are of Spanish origin, descent, or culture should be included in this category. Persons from Brazil, Guyana, Surinam or Trinidad, for example, would be classified according to their race and would not necessarily be included in the Hispanic category. In addition, this category does not include persons from Portugal, who should be classified according to race.

In cases where a firm is owned and controlled by a minority woman or women, the percentage may be credited towards DBE participation, or allocated, but may not be credited fully to both.

**Recipient** – An agency (County, City, Special District, etc.) applying for a SRF loan to construct a project.

**Contractor** – Refers to any recipient of funds who will participate in some phase of construction. The contractor receiving funds directly from the recipient for construction is the prime contractor. Contractors working for the prime contractor are subcontractors.

**Project Manager** – Is the DFA staff responsible for managing the project. The Project/Contract Manager is responsible for review during the planning, design and construction contract development phases.

### **Section 7: DBE Forms**

The following forms are provided to report project DBE information. They are available in electronic form from Barbara August at (916) 341-6952 or [baugust@waterboards.ca.gov](mailto:baugust@waterboards.ca.gov). If you have any questions about completing these forms or when to turn them in, please contact Ms. August.

**All Forms, where applicable, must have original signature and date.**

The following table provides information on who completes each form and where the forms are to be sent:

Form#	Description	Completed By	Submit To	Forward To
1	Solicitation	Prime	Recipient	DFA with AOA
2	Bids Received List	Prime	Recipient	DFA with AOA
3 (Att A)	Contractor Certification	DBE Subs	Prime	Recipient, DFA w/AOA
4 (Att B)	Selected Subcontractors	Prime (with bid)	Recipient	DFA with AOA
5	Summary	Prime	Recipient	DFA with AOA
6	Positive Effort Certification	Recipient	DFA w/AOA	

**FORM 1**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
“GOOD FAITH” EFFORT LIST OF SUBCONTRACTORS SOLICITED**

Contractor Name	Contractor Address	How Located	Date of Contact	Contact Method	Task Description	Response (Yes/No)

**Form with information required to be submitted with the AOA package.**



## FORM 2

## DISADVANTAGED BUSINESS ENTERPRISE (DBE) “GOOD FAITH” EFFORT BIDS RECEIVED LIST

[illegible]

**Form with information required to be submitted with the AOA package.**

**FORM 3 (Attachment A)**

**DISADVANTAGED BUSINESS ENTERPRISE  
(DBE)**

**CONTRACTOR CERTIFICATION**

Firm Name:	Phone:
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Address:

Principal Service or Product: Bid Amount \$

PLEASE INDICATE PERCENTAGE OF OWNERSHIP

☐ DBE \_\_\_\_\_% Ownership

<input type="checkbox"/> Prime Contractor	<input type="checkbox"/> Supplier of Material/Service
<input type="checkbox"/> Subcontractor	<input type="checkbox"/> Broker

<input type="checkbox"/> Sole Ownership	<input type="checkbox"/> Corporation
<input type="checkbox"/> Partnership	<input type="checkbox"/> Joint Venture

Certified by: Title: \_\_\_\_\_  
DBE Sub (ORIGINAL SIGNATURE AND DATE REQUIRED)  
Name: Date: \_\_\_\_\_

**IMPORTANT: CONTRACTORS CAN NO LONGER SELF-CERTIFY. THEY MUST BE CERTIFIED BY EPA, SMALL BUSINESS ADMINISTRATION (SBA), DEPARTMENT OF TRANSPORTATION (DOT) OR BY STATE, LOCAL, TRIBAL OR PRIVATE ENTITIES WHOSE CERTIFICATION CRITERIA MATCH EPA'S. PROOF OF CERTIFICATION MUST BE PROVIDED. A COPY OF THE CONTRACTOR CERTIFICATION MUST BE SUBMITTED WITH THIS FORM.**

**THIS FORM MUST BE SUBMITTED WITHIN 10 WORKING DAYS AFTER THE BID OPENING DATE.**



**FORM 5**

**SUMMARY OF BIDS RECEIVED FROM SUBCONTRACTORS,  
SUPPLIERS, AND BROKERS (DBE & NON-DBE)**

**THIS SUMMARY IS PREPARED BY THE PRIME CONTRACTOR**

<b>Type of Job</b>	<b>Company Name</b>	<b>Selected</b>	<b>Bid Amount</b>	<b>DBE</b>	<b>NON-DBE</b>

**List type of jobs alphabetically, from low to high in each category and selected low bidder.**



**FORM 6**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**  
**POSITIVE EFFORT CERTIFICATION BY APPLICANT/RECIPIENT**

1. The apparent successful low bidder on Clean Water State Revolving Fund Program funded project number C-06-\_\_\_\_\_ is \_\_\_\_\_  
(name of bidder)
2. Before the State Water Resources Control Board - Division of Financial Assistance can consider requests for an Approval of Award (AOA) to any bidder the applicant/recipient must certify to the following:

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The bidder has obtained \_\_\_\_\_% of DBE participation for this contract.

Also submitted are Forms 3 and 4 that contain a complete list of those DBE firms subcontracted with or with whom other types of agreements were made. The list includes the names of the firm, address, phone number and dollar amount involved.

The following affirmative steps as required by 40 CFR 35.3150 (d) have been taken:

- (1) The contractor divided total requirements when economically feasible, into small tasks or quantities to permit maximum participation of disadvantaged business enterprise businesses.
- (2) The contractor established delivery schedules, where the requirements of the work permitted, which encouraged participation by disadvantaged business enterprise businesses.
- (3) The contractor included qualified disadvantaged business enterprise businesses on solicitation lists.
- (4) The contractor assures that disadvantaged business enterprise businesses were solicited, whenever they were potential sources.
- (5) The contractor used the services and assistance of the Small Business Administration and the Office of Minority Business Development Agency of the U.S. Department of Commerce.

It must be understood that the applicant/recipient in its role as a public trustee assumes primary responsibility to achieve an acceptable level of DBE utilization. This primary responsibility is a basic condition of the award of any Clean Water State Revolving Fund financial assistance. Where an application/recipient fails to meet its obligations under these requirements the applicant/recipient may be declared non-responsive and may have funding either annulled, suspended or terminated.

In accepting these responsibilities, I hereby certify to the above.

\_\_\_\_\_  
Name of Applicant/Recipient

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Authorized Representative

**This form must be submitted with the AOA package.**



INSTRUCTION FOR ACCESSING <http://www.ccr.gov> DAOA BASE OF DBE SUBCONTRACTORS

1. Go to <http://www.ccr.gov>
2. Click on the bullet **Dynamic Small Business Search**
3. Under **States**, scroll down to and click on **California**
4. Scroll down to **Other Ownership DAOA**
5. Click on **Minority or Woman/Women**, do separate run for each classification
6. Scroll down to **Nature of Business**, across from **Keywords**, type in classification of work to be performed by the subcontractor (electrician, piping, rebar, trucking, landscape, etc.)
7. Scroll to **General Nature of Business** and click on **Construction**
8. Scroll to the bottom of the screen and click on **Search Using These Criteria**.
9. For additional contractors, scroll to **No more matches**, click on **Refine Search** and repeat the process by changing the type of contractor you are searching for in no. 6, **Keyword**

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